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AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/627,166 07/27/00 BRONICKI

Y 15155

EXAMINER

020529  
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WASHINGTON DC 20005

IM52/1015

THEISEN, M  
ART UNIT

PAPER NUMBER

2

1732  
DATE MAILED:

10/15/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/627,166

Applicant(s)

BRONICKI ET AL.

Examiner

Mary Lynn F. Theisen

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1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Antecedent basis is lacking for "said fluid" (claim 3), "said transporting means" (claim 4) and "the slurry" (claim 5). This problem can be corrected by changing the dependency of claim 3 from "1" to "2".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Teppo.

Teppo discloses an apparatus and process of making asphaltene pellets. The asphaltene is supplied through a conduit (36) and a stream of hot asphaltene is broken into pellets in a reservoir of liquid water (18). The pellets are removed from the reservoir with a transporting means (auger).

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Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kontry et al.

Kontry et al disclose making asphaltic pellets including flowing melted asphalt through a line 21 (conduit) to an atomizing nozzle 15 (pellet producing medium). See column 2, lines 27-30.

Claims 1, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wingerd.

Wingerd produces asphalt pellets by flowing asphalt through an atomizer. The atomizer uses a fluid such as steam, air or inert gas to break the asphalt into pellets. See column 2, lines 7-11.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims s 1-9, 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teppo.

Teppo is described above. With respect to claim 14, it would have been obvious to one of ordinary skill in the art to grind the pellets because Teppo (column 1, lines 53-59) indicates that grinding was a common step in shaping asphaltene. Also, one of ordinary skill in the art is well aware of the process of grinding to form a desired size particle from larger particles. With respect to claim 5 and 12, it would have been obvious to substitute a pump for the conveying means of Teppo because is a well known alternative means for conveying material from one place to another.

Claims 1, 6, 7, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wingerd in view of Chalmers.

Wingerd is described above. It would have been obvious to one of ordinary skill in the art to use a water atomizer in stead of the steam atomizer of Wingerd because Chalmers shows that steam and water atomizer are interchangeable (see claim 1, step b).


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Lynn F. Theisen whose telephone number is 703-308-2312. The examiner can normally be reached on Thursday and Friday 6:30-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan H. Silbaugh can be reached on 703-308-3829. The fax phone numbers for the organization where this application or proceeding is assigned are 703-307-7718 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Mary Lynn F. Theisen  
Primary Examiner  
Art Unit 1732

mlt  
October 12, 2001